NOTIFICATION.

Order No. Rl. 97—Legis. 3-42-1, dated Bangalore, the 22nd July 1942.

Ordered that the accompanying Special Criminal Courts Act, 1942, which received the assent of His Highness the Maharaja, on the 7th day of July 1942, be published as Act No. XXIV of 1942, in the *Mysore Gazette*, for general information.

C. NARAYANASWAMY NAIDU,
Secretary to Government,
Law Department.

ACT NO. XXIV OF 1942.

THE SPECIAL CRIMINAL COURTS ACT, 1942.

(*Received the assent of His Highness the Maharaja on the seventh day of July 1942.*)

WHEREAS it is expedient to make provision for the setting up of Special Criminal Courts;

It is hereby enacted as follows:—

Short title, extent and operation.

1. (1) This Act may be called the Special Criminal Courts Act, 1942.

(2) It extends to the whole of Mysore.

(3) It shall come into force in any part of Mysore only if the Government, by notification in the official Gazette, declares it to be in force in such area and shall cease to be in force when such notification is rescinded:

Provided that any trial or proceeding which was pending at the time of such rescission may be continued and completed as if the provisions of this Act were still in force.

Special Courts.

2. Courts of criminal jurisdiction may be constituted under this Act of the following classes, namely:—

(i) Special Judges;
(ii) Special Magistrates;
(iii) Summary Courts.

Special Judges.

3. The Government may appoint to be a Special Judge for such area as it may think fit any person who has acted for a period of not less than two years in the exercise of the powers of a Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1904 (hereinafter in this Act referred to as the Code).

Jurisdiction of Special Judges.

4. A Special Judge shall try such offences or classes of offences, or such cases or classes of cases as the Government, or a servant of the Government empowered by the Government in this behalf, may, by general or special order in writing, direct.

Procedure of Special Judges.

5. (1) A Special Judge may take cognizance of offences without the accused being committed to his Court for trial, and, in trying accused persons, shall follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates:

Provided that a Special Judge shall ordinarily record a memorandum only of the substance of the evidence of each witness examined, may refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose unless such adjournment is, in his opinion, necessary in the interests of justice.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Act, shall apply to the proceedings of a Special Judge; and for the purposes of the said provisions the Court of the Special Judge shall be deemed to be a Court of Session.

Sentences by Special Judges.

6. A Special Judge may pass any sentence authorised by law.

Review of convictions.

7. If in any proceedings before a Special Judge—

(*a*) a person convicted is sentenced to death, or to transportation for life, or to imprisonment for a term of seven years or more, or

(*b*) though no person is so sentenced, the Special Judge certifies that in his opinion the case has involved questions of special difficulty, whether of law or fact, or is one which for any other reason ought properly to be reviewed,

the proceedings shall be submitted for review by a person nominated in this behalf by the Government, which

347

person shall be chosen from the Judges of the High Court, and the decision of that person shall be final.

Special Magistrates.

8. Any District Magistrate or Magistrate of the first class who has exercised powers as such for a period of not less than two years may be invested by the Government with the powers of a Special Magistrate under this Act.

Jurisdiction of Special Magistrates.

9. A Special Magistrate shall try such offences or classes of offences, or such cases or classes of cases other than offences or cases involving offences, punishable under the Indian Penal Code as in force in Mysore with death, as the Government, or a servant of the Government empowered by the Government in this behalf, may, by general or special order in writing, direct.

Procedure of Special Magistrates

10. (1) In the trial of any case, a Special Magistrate shall follow the procedure laid down in sub-section (1) of section 5 for the trial of cases by a Special Judge.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Act, shall apply to the proceedings of a Special Magistrate; and for the purposes of the said provisions, the Special Magistrate shall be deemed to be a Magistrate of the first class.

Sentences by Special Magistrates.

11. (1) A Special Magistrate may pass any sentence authorised by law, except a sentence of death or of transportation or imprisonment exceeding seven years.

(2) If a Special Magistrate is of opinion that an offence under trial by him requires a punishment in excess of that which he is empowered to inflict, he shall stay proceedings and send the case for trial to the Special Judge having jurisdiction in the area, and the Special Judge shall thereupon have jurisdiction to try the case as if it had been made over to him by order in writing made under section 4.

Appeal.

12. (1) Where a Special Magistrate passes a sentence of transportation or imprisonment for a term exceeding two years, an appeal shall lie to the Special Judge having jurisdiction in the area or, if there is no Special Judge for the area, to the Court of Session.

(2) An appeal under sub-section (1) shall be presented within seven days from the date of the sentence.

(3) In disposing of an appeal under this section, a Special Judge shall follow the same procedure and have the same powers as an appellate Court follows and has under the Code.

348

Distribution of cases.

13. If any question arises whether, under any order made under section 4 or section 9, an offence is triable by a Special Judge or a Special Magistrate, the question shall be referred for decision to the authority which made the order and the decision of that authority shall be final.

Summary Courts.

14. The Government may, by general or special order in writing, empower any Magistrate appointed under the provisions of the Code to exercise the powers of a Summary Court in any area specified in the order.

Jurisdiction of Summary Courts.

15. (1) A Summary Court shall have power to try such offences or classes of offences, or such cases or classes of cases as the District Magistrate or a servant of the Government authorised in this behalf by the District Magistrate may by general or special order direct:

Provided that no person shall be tried by a Summary Court for an offence which is punishable with imprisonment for a term exceeding two years, unless it is an offence specified in sub-section (1) of section 260 of the Code.

(2) The District Magistrate may by general or special order give directions as to the distribution among the Summary Courts within his jurisdiction of cases triable by them under sub-section (1).

Procedure of Summary Courts.

16. In the trial of any case a Summary Court, shall, as far as possible, follow the procedure laid down in the Code for the trial of warrant cases, and shall have all the powers conferred by the Code on a Magistrate:

Provided that the Court shall not be required to record more than a memorandum of the evidence or to frame a formal charge:

Provided further that, in the trial of any offence punishable with imprisonment for a term not exceeding one year, the Court may follow the procedure for the summary trial of cases in which an appeal lies, laid down in Chapter XXII of the Code.

Sentences by Summary Courts.

17. Summary Courts may pass any sentence which may be passed by a Magistrate of the first class.

Appeals.

18. (1) If a Summary Court, in a case tried according to the procedure for the trial of warrant cases, passes a sentence of imprisonment for a term exceeding three months or of fine exceeding two hundred rupees or, in a case tried by summary procedure, passes a sentence of imprisonment for a term exceeding one month or of fine exceeding fifty rupees, an appeal shall lie to the Special

Magistrate or other Magistrate of the first class appointed by the District Magistrate of the District in which the Summary Court is situated to hear appeals from that Court.

(2) An appeal under sub-section (1) shall be presented within seven days from the date of the sentence.

(3) In disposing of an appeal under this section, the appellate Court shall follow the same procedure and have the same powers as an appellate Court follows and has under the Code.

Procedure when Summary Court considers case triable by another Court.

19. (1) If a Summary Court is of opinion that the offence disclosed is one which it is not empowered to try, it shall send the case for trial to the Special Judge or Special Magistrate empowered to try the case under this Act or, if no such Court has been so empowered, to an ordinary Criminal Court having jurisdiction.

(2) If a Summary Court is of opinion that an offence which it is empowered to try should be tried by a Court of superior jurisdiction, or that it requires a punishment in excess of that which the Summary Court is empowered to inflict, it shall stay proceedings and report the case to the District Magistrate who may—

(*a*) direct that the case shall be tried by a Summary Court, or

(*b*) send it to a Court constituted under this Act having jurisdiction, or to an ordinary Criminal Court having jurisdiction, or

(*c*) report it for the orders of the Government.

Power of Special Courts to deal with refractory accused.

20. (1) Where an accused, in a trial before a Court constituted under this Act, has, by his voluntary act, rendered himself incapable of appearing before the Court, or resists his production before it, or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing made after such inquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit, and proceed with the trial in his absence.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial or

350

being present in person if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial before a Court constituted under this Act, shall be held to be illegal by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

wers of ecial urts to clude the blic.

21. A Court constituted under this Act may, if it thinks fit, order at any stage of a trial that the public generally or any particular persons shall not have access to or be or remain in the room or building used by the Court.

ecial rule evidence.

22. Notwithstanding anything contained in the Indian Evidence Act, 1872, as in force in Mysore, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Court constituted under this Act, if such person is dead or cannot be found or is incapable of giving evidence.

ecial rule procedure.

23. (1) Notwithstanding anything contained in section 386 of the Code, where any offender has been sentenced by a Court constituted under this Act, to pay a fine, the Court may recover the fine by the issue of a warrant for the levy of the amount by attachment and sale of any property, movable or immovable, of the offender.

(2) Notwithstanding anything contained in section 545 of the Code, a Court constituted under this Act may, when imposing a fine on any person convicted by the Court, order the whole or any part of the fine recovered to be applied—

(*a*) in the payment to any person affected by the offence of compensation for any loss, injury or annoyance caused by the offence, or

(*b*) in the payment of a reward to any person who has given information leading to the detection of the offence or to the conviction of the accused.

egal Practi- oners.

24. A Court constituted under this Act shall not be required to grant an adjournment for the purpose of securing the attendance of a legal practitioner, if in the opinion of the Court such adjournment would cause unreasonable delay in the disposal of the case.

357

25. Notwithstanding the provisions of the Code, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Act, be no appeal from any order or sentence of a Court constituted under this Act and, save as aforesaid, no Court shall have authority to revise such order or sentence, or to transfer any case from any such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings of any such Court. Exclusion of interference of other Courts.

26. The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act, shall apply to all matters connected with, arising from or consequent upon a trial by Special Criminal Courts constituted under this Act. Application of ordinary law.

27. The Special Criminal Courts (Emergency) Act, 1942 (XVII of 1942), is hereby repealed. Repeal and Savings.

N. MADHAVA RAU,
Dewan.

Price Re. 0-0-9

Printed by the Superintendent at the Government Press, Bangalore.